



General Assembly

Distr.: General
27 February 2014

English only

Human Rights Council

Twenty-fifth session

Agenda item 2

Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General

Written statement* submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in
accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting
non-governmental organization(s).

GE.14-11458



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HL Panel on the 65th Anniversary of Convention on Prevention of Genocide

Twenty years after the genocide in Rwanda and sixty-nine years after the Holocaust, crimes against humanity, ethnic cleansing, war crimes and genocide continue as repressive regimes deliberately target and destroy ethnic and religious minorities around the world. Since the killing of up to one million Rwandans in 1994 despite the presence of UN peace keeping forces, all UN Secretary-Generals and governments around the globe have insisted in bold declarations that this catastrophe never should happen again. Despite these announcements every year tens of thousands of civilians in Syria, Sudan, South Sudan, Democratic Republic of Congo and Central African Republic and many other states become victims of crimes against humanity.

On 9 December 1948, the General Assembly of the United Nations adopted the "Convention on the Prevention and Punishment of the Crime of Genocide". In Article I, contracting parties declared genocide to be a crime under international law which they undertake to prevent and to punish. But despite these announcements there was no international action against the genocide in Biafra (Nigeria), which has caused hunger blockades against the civilian population and the deliberate killing of more than two million civilians.

No state has intervened than Indonesia has launched genocide in East Timor. It's only up to the democratization process in Indonesia, the commitment of the former colonial power Portugal and the advocacy activities of national and international NGO's that East Timor finally became an independent state and member of the United Nations. But impunity persists. The survivors of the genocide in East Timor still are voiceless, because their testimonies of their suffering have not been published in order to avoid a diplomatic crisis with Indonesia. Hundreds of thousands of victims of genocide and violence still are traumatized, but they are lacking psychological assistance and there is no real reconciliation between victims and perpetrators of violence.

The victims of mass killings in Sudan's Darfur and South Kordofan (Nuba Mountains) regions have been forgotten for years. Most governments primarily were concerned about the political implications, if they would confirm that genocide has been committed. Therefore they have opted for no action hoping that the situation would improve. In the Darfur crisis it took several years before the Security Council finally convened to act and has sent a combined peace keeping force of the United Nations and the African Union. But the suffering of the civilian population in Darfur has continued for eleven years because the peace keeping forces are ill equipped, not supported by the Sudanese authorities and mostly concerned about their own security. In the year 2013 violence in Darfur has escalated once again and more than 300.000 civilians became internally displaced.

We are thankful for the initiative of former UN Special Representative on Internally Displaced People, Francis Deng, who suggested in 1995 the new principle that the international community had not only a right, but a responsibility to step in than states were failing to protect their own citizens. In the year 2001 the independent "International Commission on Intervention and State Sovereignty (ICISS)" has released their first report on the "Responsibility to Protect". In December 2004, the "Responsibility to Protect" was adopted as a principle by a High-Level Panel of experts commissioned by UN Secretary-General Kofi Annan. Member states unanimously endorsed the "Responsibility to Protect" at the UN World Summit in September 2005. Since that time the UN Secretary-General has presented five comprehensive reports on this principle, the latest report has been published on July 9, 2013. We are very thankful for his commitment to encourage all UN member states not to ignore crimes against humanity, ethnic cleansing and genocide, but to advocate for more international mechanisms to effectively stop gross human rights violations. No state should be a bystander to genocide and crimes against humanity because mass atrocities have long-lasting negative impacts far beyond the states in which they occur.

Despite this commitment to ensure a better protection of the civilian population the human rights crisis in Libya, Myanmar, South Sudan and Central African Republic have shown that the existing mechanisms to stop mass atrocities are not sufficient and that most state governments are lacking political will to act and to stop the suffering of the civilian population. Instead of implementing the principle "Responsibility to Protect" they are choosing to provide humanitarian assistance to the people suffering. Certainly the victims of mass atrocities are lacking humanitarian relief but this will not stop violence.

Since mid-December 2013 thousands of civilians in South Sudan became victims of human rights violations, committed by all conflict parties in their power struggle. A still unknown figure of civilians has been murdered in massacres only due to their ethnic origin. The United Nations Mission in South Sudan (UNMISS) has been overwhelmed by some 80.000 civilians who have searched for protection in their camps. Once again UN missions were ill-equipped and not well prepared to ensure the protection of the civilian population. Fortunately at least in their UN camps they were able to prevent new massacres or massive human rights violations. But beyond these UN camps, they were unable to ensure protection.

In January 2014, the civil war in Central African Republic has escalated. Muslim minority people have been targeted by militias and French and African peacekeepers were unable to ensure their protection.

Therefore, more than 70.000 people of the Muslim minority had to search for protection in neighboring countries. Despite many early warnings of international NGO's the international community has not acted in time to prevent mass atrocities and is still unable to ensure the protection of minority people.

We are welcoming that the Security Council has issued a presidential statement reaffirming commitment to protection of civilians in armed conflict on February 12, 2014. We are calling on the UN Human Rights Council to urge the international community to implement the principle "Responsibility to Protect" and to continue to search for better and more effective early warning mechanisms for mass atrocities and for a speedy process of launching international peace keeping missions in conflict areas.



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Twenty-fifth session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Jammu and Kashmir Council for Human Rights (JKCHR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-11460



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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

United Nations has remained deeply occupied in the Rights of the People of Jammu and Kashmir. On 20 January 1948 UN Security Council by its resolution S/654 established a Commission to investigate the facts pursuant to Article 34 of the Charter. The Commission performed functions "in regard to the situation in the Jammu and Kashmir State set out in the Letter dated 1 January 1948 from the Government of India and in regard to other situations set out in the Letter dated 15 January 1948 from the Government of Pakistan". A truce agreement was brokered between India and Pakistan in January 1949 and the fighting elements in the State were made subject of this truce agreement.

In 1965 large scale hostilities broke out between India and Pakistan along the Kashmir border. UN Security Council adopted four resolutions and demanded a cease fire and a withdrawal by the parties to the positions occupied by them before 5 August 1965 and called upon the Secretary General to provide all necessary assistance. To ensure supervision of the cease fire and the withdrawal of all armed personnel, the Security Council, in 1965 strengthened the already existing United Nations Military Observer Group in India and Pakistan (UNMOGIP), established a new United Nations India-Pakistan Observation Mission (UNIPOM), and appointed a personnel representative to meet with both parties and seek agreement on a plan and schedule for the withdrawals.

UNMOGIP and UNIPOM had to ensure that action agreed on 29 January 1966 was fully implemented and in the event of disagreement between the parties, the decision of UNMOGIP and UNIPOM would be final and binding on both sides. The withdrawal was to be completed by 25 February 1966.

On 31 January 1966 UNMOGIP and UNIPOM reported that the first phase of the first part of the disengagement and withdrawal plan had been completed in all sectors. The second phase (i.e. the removal of defence works) had been completed on 20 February 1966. On 26 February 1966, the Secretary General reported that the withdrawal of troops by India and Pakistan had been completed on schedule on 25 February 1966. The withdrawal provisions of the Security Council's resolution had been fulfilled by the two parties.

United Nations resolutions embed the principal concern in regard to the situation in Jammu and Kashmir and in addition address the question of 'equality of people' for the right of 'self-determination' and address the broad regime of their human rights. The formal consent of the People of Jammu and Kashmir occupies the main debate at the United Nations.

UN Security Council resolution of 21 April 1948 has addressed the two Governments of Pakistan and India in regard to the human rights of all State Subjects of Jammu and Kashmir. Government of Pakistan was charged with a duty to ensure that Tribesmen and Pakistani nationals not normally residents are withdrawn from the State and full freedom to all subjects of the State, regardless of creed, caste, or party, to express their views and to vote on the question of the accession of the State had to be assured. The third choice of a membership as an independent State at the UN contained in the Indian communication, has for some reason remained subdued during the debate. The deficit in the representation of the people of Kashmir has not been addressed either.

Government of India has accepted duties in the provisional accession of the State. In addition it had to "put into operation in consultation with the Commission a plan for withdrawing their own forces from Jammu and Kashmir and reducing them progressively to the minimum strength required for the support of the civil power in the maintenance of law and order.

UN Security Council resolution has addressed the Government of India on a further regime of human rights that it had to assure while "stationing the remaining forces". Government of India had to arrange in consultation with the Commission for the stationing of the remaining forces in accordance with the following three principles:

- (i) That the presence of troops should not afford any intimidation or appearance of intimidation to the inhabitants of the State,

- (ii) That as small a number as possible should be retained in forward areas,
- (iii) That any reserve of troops which may be included in the total strength should be located within their present base area.

United Nations remained pre-occupied with the formal free will of the people and charged the Government of India to "ensure that the Government of the State release all political prisoners and take all possible steps so that:

- (a) all citizens of the State who have left it on account of disturbances are invited, and are free, to return to their homes and to exercise their rights as such citizens
- (b) there is no victimization
- (c) minorities in all parts of the State are accorded adequate protection.

The Commission of the Security Council at the end of the Plebiscite had to certify to the Council whether the plebiscite has or has not been really free and impartial.

The non interest of the UN Security Council from November 1965-August 1996 into the investigated situation in Jammu and Kashmir and its lack of will to prosecute its programme to ascertain the formal consent of the people created a situation in which a militant movement was introduced into the Valley of Kashmir. India and Pakistan fought a proxy war against each other, making the civilians a casualty during the last 23 years.

Government of India erred as a leading democracy and could not keep to its terms of provisional accession (which is pending for ratification), nor could it follow the responsibilities apportioned to it under the UN Security Council resolutions.

Pakistan supported a militant movement and camouflaged it under its routine narrative of offering the people of Jammu and Kashmir a political, moral and diplomatic support. Government of Pakistan has not allowed the two administrations of Jammu and Kashmir on its side to function as required under UNCIP resolutions or as required by the judgements of superior courts of these administrations. It used the instrument of a proxy politics and every method including violence was brought to bear to obtain compliance. Use of violence by the parties has resulted in the loss of life of a generation.

United Nations which set out in January 1948 to enforce the "primary will" of the people of Jammu and Kashmir could have averted the death of a generation and could have saved the people from an unprecedented violation of human rights never witnessed from 1846. Indian soldier invested with a duty to defend the territories, protect lives, property and honour and referenced in the UN Security Council resolutions as a Peace Keeping force, to supplement law and order for the purposes of enforcing the UN mechanism in Kashmir, lost his calm and nerve. He could not honour the manner of behaviour, number and location stipulated in the UN Security Council resolutions.

Government of Pakistan could not replenish (to continue its proxy war) the numerical deficit caused by the death of a generation and by disappearances. The non interest of the world community in the politicised and compartmentalised narrative on the promotion and protection of human rights have disappointed the people in Jammu and Kashmir.

JKCHR Secretary General has just returned from a 5 week visit of Kashmir Valley. We would like to flag the following for the favourable attention of the Human Rights Council, NGOs and other distinguished delegates in attendance at the Session:

1. JKCHR has compiled a list of 1421 widows between the ages of 13 to 85 years (in one area alone). These widows have neither received any support nor could marry for religious reasons for 23 years.
2. Young women have been exposed to abject poverty during the 23 year armed conflict. The High Court has asked the Government to formulate schemes to rehabilitate a group of 37,3086 girls identified as poor and helpless.

3. Kashmir (Valley) has been hit by a number of disturbing sex scandals in the last 23 years. There is a risk that these helpless women may be sucked into prostitution and other vices.
4. The recent figures released by the State Government show that currently there are 22000 surrendered, 17000 released and 376 active militants in hinterland and 56 Nepal returns. According to the Economic Survey Report of 2013-14 tabled by the State government in Legislative Assembly the number of registered job seekers has increased from 106130 in 2008 to 307827 in 2013, registering an increase of 190% in unemployment.

An uncertain life under five Governments at Delhi, Islamabad, Srinagar, Muzaffarabad and Gilgit remains at the core of this hopelessness. India, Pakistan and the United Nations have to move in to assist State government to boost the traditional skills, utilize the untapped natural resources and natural environment, for environment friendly tourism industry.



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Human Rights Council

Twenty-fifth session

Agenda item 4

Human rights situations that require the Council's attention

Written statement* submitted by Jammu and Kashmir Council for Human Rights (JKCHR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-11462



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Human rights situations that require the Council's attention

Human Rights Council, NGOs and other distinguished delegates at the Session have been listening to more than one discipline of opinion on Jammu and Kashmir. These opinions have become disappointingly more polarised and compartmentalised in recent years. The representation of the distributed people living under the three administrations on either side of cease fire line has tuned into a commercial enterprise and into a serious institutional and individual abuse of a myriad kind. A new culture of rent an NGO and hire an individual does not serve the cause of the 'human rights situation' in Kashmir. The malaise infesting some NGOs and various individuals has to be addressed in the interests of the mandate of the NGOs and Human Rights Council.

The present territorial Partition of the State of Jammu and Kashmir is temporary. It is based on the UNCIP brokered cease-fire agreement reached between India and Pakistan in 1949. Under the agreement India, Pakistan and UN have accepted that the former princely state of Jammu and Kashmir is disputed. Cease-fire has granted both signatories interim administrative authority, pending the final resolution of the dispute. UN Mechanism precludes India and Pakistan on their own from extending claims to sovereignty over all or at least part of the State. There is a confused amalgam of partial and overlapping sovereignties.

Indian and Pakistani references in the resolution of the question of 'equality' and self-determination of the people of Jammu and Kashmir have corresponding duties and responsibilities as well. Therefore, a better India-Pakistan equation in relations would pour out an illimitable benefit for the process and quality of life and in the resolution of the question of 'equality' and self-determination of the people of Jammu and Kashmir.

We have to admit that the people of Jammu and Kashmir could not benefit from the Indian, Pakistani and the UN reference in the matter of their 'equality' and 'self-determination'. They failed to construct an independent political and diplomatic narrative to prosecute the jurisprudence of their case at the UN Security Council. It is time that they start to examine the failed non-Kashmiri narrative of Politics, Militancy and Diplomacy.

The failure of the people of Jammu and Kashmir lies mainly with their inability to address in equity the question of their formal consent (Plebiscite) in India-Pakistan equation. Indian position set out in her petition of 01 January 1948 addressed to the UN Security Council in inclusive. It follows the terms of agreement contained in the bilateral agreement of 26/27 October 1947 reached with the Government of Jammu and Kashmir. Indian Government has taken upon to defend the territories and protect the lives, property and honour of the people in the State.

It is not clear whether Pakistan as a party to the dispute has a territorial outcome at the bottom of its sovereign interest and the assured uninterrupted use of natural resources, in particular waters embedded in the habitat of Kashmir or that it continues to have a due regard for the principle of 'equality' of the people as a UN Charter principle and the wisdom embedded in article 257 of the Constitution of Pakistan.

The failure of Pakistan to honour the Stand Still Agreement of August 1947 with the Government of Jammu and Kashmir remains an unfriendly act which has disturbed the merits of Kashmir case. The Indian petition of 01 January 1948 made under article 35 of UN Charter to the UN Security Council is inclusive. Pakistan's response made on 15 January 1948 asking to cover "much larger ground and embrace all the fundamental differences" has been unhelpful. Pakistan's principal interest in the division of military stores, division of cash balances and interference (Indian) with the Reserve Bank so as to destroy the monetary and currency fabric of Pakistan are the highlights of a diplomacy which over rode the interests of the people of Jammu and Kashmir. There was no interest from November 1965 to August 1996, until the issue was hit by Rule 11 of the provisional rules of procedure of the Security Council.

Administratively, Pakistan still controls Azad Kashmir through two devices: the Azad Kashmir Council and importantly through the five lent officers that Islamabad continues to embed in the Azad Kashmir administration. These Pakistanis still fill the most senior positions in the Azad Kashmir administration – even though there are sufficiently skilled Azad Kashmiri officers now able to administer this region.

Pakistani lent officers in Azad Kashmir act as Secretary General/Chief Secretary, Finance Secretary, Accountant-General, Inspector General of Police and Chief Engineer/Development Commissioner. Pakistan has retained major share of authority in the Azad Kashmir Council as well. It is headed by the Prime Minister of Pakistan and he nominates

five members from amongst Federal Ministers and Members of Pakistan Parliament on it. The Federal Minister of State for Kashmir Affairs and Northern Affairs (Gilgit and Baltistan) remains the ex officio member of the Council. These seven people are non-State Subjects sitting in a legislative authority on a people who have been given into a temporary administrative control of Pakistan under the UNCIP resolutions. This mechanism of administration remains at variance with UN mechanism and manner of administration envisaged for Azad Kashmir and Gilgit Baltistan in UNCIP resolutions

The management of the people and the area through this mechanism has kept the economy of these two areas backward. Loss of connections with the Indian administered Jammu and Kashmir from 1947, particularly the Jhelum Valley Road that carried tourists and trade between Rawalpindi and the Kashmir Valley, has reduced Azad Kashmir's economic options. Azad Kashmir has remained totally dependent on Pakistan for defence, employment, goods and markets, food and financial support. Pakistan has controlled the two factors that they could have exploited to reduce their region's dependency: hydroelectricity and foreign remittances. A dependant and pliant, Azad Kashmir has been Islamabad's liking.

The 1972 Simla Agreement gave Pakistan some sense of security that it could now invest in Pakistan-Administered Kashmir without fear of losing Azad Kashmir or the Northern areas and any Pakistani investment to India. After Simla, the plebiscite was off the India-Pakistan agenda and any Indian attempt to capture Pakistan-Administered Kashmir was unlikely to happen.

Pakistan after the election of the present Government has decided to shape its future foreign policy on four key priorities. It has decided to build a peaceful and prosperous neighbourhood, reach out to regional and international partners, focus on "trade, not aid" and lastly develop a consensus-based approach to counter terrorism. The change in the foreign policy of Pakistan is good news for the people of Pakistan, India and Kashmir. Unless Pakistan moves up in the ranks in diplomacy and economy of the league of nations, Kashmiris would not benefit from its reference in their case. A weak reference is never helpful and promotes frustration, as seen in early 1990s.

There is an urgent need that the Human Rights Council seeks means to assist all the people of Kashmir to avail the various reliefs contained in the jurisprudence of UN role in Kashmir case. The expression of a solidarity with the people of Kashmir on 5 February every year, briefing the foreign envoys and explaining the status of UN resolutions by the foreign office of Pakistan have no merit unless the people and the leaders of Kashmir assume the ownership of their case as "equal people".

We have a template of solution provided by China under the title "Articles of Settlement" on 18 March 1948. It is the basis of another template for resolution of the dispute introduced by Belgium, Canada, China, Colombia, The United Kingdom and The United States of America adopted at the 286th Meeting as UN Security Council Resolution S/726 dated 21 April 1948. The three assemblies of Jammu and Kashmir and Kashmiri diaspora could be encouraged to construct an independent political and diplomatic narrative on Kashmir. United Nations and its sub ordinate bodies could guide and support the civil society institutions working on either side of cease fire line for the promotion and protection of human rights.

It is important that Human Rights Council flags its robust interest in the subdued role and the poor quality of life of the people of Jammu and Kashmir currently sandwiched in the India-Pakistan equation. Regard should be taken of the principle of 'equality' of the people and recourse to any 'territorial outcome' has to be opposed. The right to equality of the people has to be differentiated from the respective territorial claims (if any) of India and Pakistan. The economic disruption caused by de facto partition of Jammu and Kashmir along the Cease Fire Line needs to be addressed in the interests of peace and security and the overall welfare of people.

Human Rights Council, NGOs, Inter-governmental bodies, National Institutions and other delegates are respectfully urged to ensure that there is no secondary victimization of these people by allowing their representation in this forum to turn into an institutional and individual business enterprise.



General Assembly

Distr.: General
27 February 2014

English only

Human Rights Council

Twenty-fifth session

Agenda item 4

Human rights situations that require the Council's attention

Written statement* submitted by Presse Embleme Campagne, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

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GE.14-11464



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The necessity to move to a “zero tolerance” culture towards violence against media workers in order to insure their protection

The year 2013 has been the second deadly year for media workers in the last ten years because of the coverage of several armed conflicts. 129 journalists were killed in the line of duty in 28 countries. In 2012, 141 journalists were killed, a record figure due to the deadly Syrian conflict. The number of journalists killed in Syria this year has decreased however abductions of foreign journalists have increased: 15 so far are still in captivity in Syria or have disappeared.

Using the same yardstick, 107 journalists were killed in 2011, 110 in 2010 and 122 in 2009. A total of 609 journalists have been killed during the past 5 years; on average: 122 per year and 2,3 per week, one every three days.

Among the 129 journalists killed in 2013 around the world 90 (70%) were killed in conflict zones or in violent unrest. Three quarter of them were intentionally targeted, others were killed mostly accidentally in bomb attacks.

Overview

The journalists covering the Middle East were the hardest hit 44 (34%), followed by Asia 37 (29%), then Latin America 27 (21%), Africa follows with 18 (14%) ahead of Europe 3 (2%).

Syria ranks first as the deadliest country for media workers for the second year with 17 journalists killed. Iraq comes second with 16 killed, followed by Pakistan with 14, the Philippines 11 and India with nine killed.

According to the PEC observations, the situation has unfortunately deteriorated again in Iraq particularly in Mosul after an improvement last year: 16 journalists were killed in the country in 2013 against 3 in 2012.

Somalia comes in 6th place with 8 killed against 19 last year. Egypt follows with 7 killed, a marked deterioration following the 30 of June revolution that led to the ousting of former President Mohamed Morsi. Brazil ranks in 8th position with 6 journalists killed (against 11 in 2012), and Mexico 5 (against 11), Guatemala follows with 4 journalists killed.

Afghanistan, Columbia, Honduras, Libya and Russia witnessed the killing of 3 journalists in each country. Two journalists were killed in Haiti, Kenya, Mali, Paraguay. And one in each of the following countries: Cote d'Ivoire, Central African Republic, Democratic Republic of the Congo, Ecuador, Nigeria, Peru, Uganda, Tanzania and Yemen.

Syrian Arab Republic: unprecedented kidnapping

In Syria, the number of journalists killed has diminished (-20) however the number of journalists kidnapped has risen dramatically. At the time of writing, at least 15 foreign journalists are in captivity: Didier François (France), Edouard Elias (France), Nicolas Hénin (France), Peter Torres (France), Basher Fahmi (Jordanian/Palestinian), James Foley (USA), Austin Tice (USA), Ishak Mostar (Mauritania), Samir Kassab (Lebanon), Bunyamin Aygun (Turkey), Marc Marginedas (Spain), Javier Espinosa Robles (Spain), Ricardo García Vilanova (Spain), Magnus Falkehed (Sweden), Niclas Hammarström (Sweden).

At least another 15 foreign journalists were freed or were successful in fleeing captivity, marking the total to a high of 30 kidnapped or disappeared in 2013.

Those kidnappings in Syria by armed groups are unprecedented; even in Iraq between 2003 and 2006 this high figure was not common which renders the coverage of the ongoing war in this country extremely dangerous for journalists. Those armed groups only seek financing of their armed struggle which places them on the level of criminal groups.

The PEC calls for the immediate and unconditional release of all journalists detained or abducted in the Syrian Arab Republic.

Pakistan: a high environment of impunity

During last several years, Pakistan has consecutively remained the third deadliest country for journalists on this globe. According to the list of the PEC, 11 journalists were murdered with impunity in 2011, it further roses to a dozen journalists' casualties in 2012 and in 2013 it further inched up to 14.

This appalling record is constantly drawing attention of world community and media defense groups including the PEC that are calling upon Pakistani government for greater journalist's protection, and investigation and prosecution of the murderers of more than 100 journalists.

Dozens of journalists have been intimidated, abducted, attacked and injured, but except a few, others 'kept mum' and did not report due to 'high environment of impunity' they are experiencing in other journalists' cases who are either been killed or seriously injured in line of duty.

Enormous threats are posed to the journalists' safety in Pakistan, especially in conflict zones. Scores of journalists have been killed in these regions including Baluchistan and Federally Administered Tribal Areas (FATA) that is bordering Afghanistan.

Journalists who had been threatened with death have relocated themselves and their families to safe places or resorted to self-censorship. Many have been killed by militants, but sometime fingers are also raised at state agencies.

In March 2013, international media support groups, UN representatives, journalists trade unions, civil society and associations working on journalists' safety and media freedom gathered in Islamabad in a two-day international conference and launched the United Nations Action Plan against Impunity, in Pakistan. Another international conference was held in Pakistan and launched 'Pakistan Coalition of Media on Safety (PCOMS)' which is an alliance of media stakeholders seeking to promote a unified agenda of safety for journalists, media workers and media establishments in the country to take advantage of global UN plan against impunity in Pakistan.

Nawaz government's information and broadcasting minister assured during first meeting of the PCOMS steering committee in October 2013 that the government of Pakistan will extend support for the implementation of the UN Action Plan with the help of the PCOMS. The government will fully support the efforts of the UN and its partners in Pakistan for combating impunity against journalists for keeping them safe. The PEC will follow closely the concrete actions taken by the government in this regard.

Progress at the international level

Progress has occurred while mobilizing the international community, the Security Council has convened two meetings on the protection of journalists, the UN General Assembly has adopted a resolution and the Human Rights Council decides to convene a Panel discussion on the same issue, while UNESCO continues the implementation of its Plan of action.

This awakening is a great success for organizations that defend journalists; now the question is what has to be done in order to effectively protect journalists in conflict zones.

Conclusion

With less than 5% of the cases of media workers' killing solved in the last 10 years, impunity remains the major cause of the high number of victims. The PEC is firmly convinced that the time has come to move from the impunity culture to a culture of "zero tolerance" towards violence against media workers.



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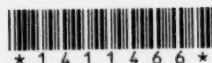
Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General

Written statement* submitted by Pasumai Thaayagam Foundation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in
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[17 February 2014]

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The need for an Independent International Commission of Inquiry on Sri Lanka

United Nations High Commissioner for Human Rights' update to HRC on 24 September 2013 on implementation of Resolution 22/1 *Promoting reconciliation and accountability in Sri Lanka*, HCHR encouraged the Sri Lankan Government to use the time before March 2014 "to show a credible national process with tangible results, including successful prosecution of individual perpetrators, in absence of which ... international community will have a duty to establish its own inquiry mechanisms."

Pasumai Thaayagam Foundation believes it is high time to establish such an international independent inquiry mechanism. In lieu of this Pasumai Thaayagam Foundation endorses the following findings of the investigative report of the International Crimes Evidence Project (ICEP), of the Public Interest Advocacy Centre, Australia titled "Island of Impunity"¹.

The report presents an evidentiary platform for an international investigation into war crimes and crimes against humanity. Evidentiary material indicates that members of the Sri Lankan Security Forces (SFs) perpetrated the vast majority of alleged crimes during the investigation period and are responsible for serious violations of international humanitarian law (IHL) and international human rights law as these violations amount to war crimes.

Certain crimes committed during final stages of war involved flagrant and reckless disregard for laws of war, strongly suggesting that it was intentional. This is evidenced from the fact that with effective control of all land, sea, and air approaches, the disciplined, well-trained and well-armed Sri Lankan SFs conducted indiscriminate artillery bombardments of areas of Tamil civilian concentrations, also striking hospitals and humanitarian sites. Pasumai Thaayagam Foundation strongly believes that this amount to genocide.

Attacks in and around civilian areas: Between January and May 2009, Sri Lankan Army established three No Fire Zones (NFZs). After declaration of NFZs hundreds of thousands of Tamil civilians were displaced by intensifying hostilities, and the conflict zone contracted sharply. Army's 'guarantee' that NFZs would be protected from attack encouraged civilians to concentrate in those areas unaware that this increased the risk of heavy civilian casualties.

The SFs used indirect fire weapons, including artillery, mortars and multiple barrel rocket launchers, in densely-populated areas. The attacks analyzed reveal an intensified practice of indiscriminate artillery area bombardment since the attacks killed and wounded scores of Tamil civilians who were attempting to take shelter from sustained shelling, or trying to perform basic activities. Some of these attacks including, indiscriminate attacks on the villages of Karaiyamullivaikkal and Vellamullivaikkal, and the third NFZ generally, could be evidence of direct attack on civilians and could amount to war crime of attacking civilians.

Considering the SFs' ability of planning and executing military operations with advanced technology the patterns of incidents are results of deliberate planning and policy decisions. Killing of persons, when committed as part of widespread or systematic attack on civilian population, pursuant to, or in furtherance of State policy, amounts to the crime against humanity.

Denial of humanitarian assistance: Reasonable grounds exist to suspect that Sri Lankan Government deliberately understated the number of civilians in conflict zone and need for food and basic medical supplies. Amount of food

¹ 'Island of Impunity? Investigation into international crimes in the final stages of the Sri Lankan civil war' -A report by International Crimes Evidence Project (ICEP), Public Interest Advocacy Centre Ltd, Sydney, Australia, 13 February 2014

provided was grossly inadequate and civilians starved to death. Sri Lankan Government restricted the humanitarian convoys even though senior Government doctors highlighted urgent need for additional drugs and medical supplies.

The International Committee of the Red Cross (ICRC) was given very limited access. Witness accounts also indicate that ICRC ships, which were trying to evacuate wounded civilians, were impeded by shelling directed either at or near them, raising the suspicion that Sri Lankan Government deliberately denied humanitarian assistance.

Pasumai Thaayagam Foundation notes that attacks on persons, transports or objects lawfully using distinctive ICRC emblem, ICRC personnel or vehicles, constitute war crimes and violation of International Human Rights and International Humanitarian Law.

Killing: After defeat of the Liberation Tigers of Tamil Eelam (LTTE), negotiations brokered Sri Lankan Government officials, international officials, and others led to several senior LTTE leaders and members surrendering to the SFs, and other LTTE members being captured and held in SFs' custody. There are grounds to suspect that some of the surrendered and captured were subsequently killed unlawfully by SFs.

Analysis of ICEP documented cases of custodial deaths reveals that senior Government officials including the Sri Lankan President accepted terms of surrender of LTTE Political Wing leaders Nadesan and Pulidevan and guaranteed their safety. Multiple witnesses observed Nadesan and Pulidevan being personally taken into SFs' custody and shortly after, another witness saw their dead bodies in Wadduvakal.

ICEP relied on photographs and videos of LTTE Colonel Ramesh in SFs' custody and being interrogated by SFs. Photographs taken less than three hours later depict him dead.

ICEP relied primarily on photographs, video footage and witness account that locate the Tamil newsreader, Isaipriya, alive and unarmed in SFs' custody. Same day other photographs and footage show her lying dead.

ICEP relied on photographs and video footage showing 12 year old Balachandaran son of LTTE leader Prabhakaran in SFs custody. Less than two hours after being taken into custody evidentiary material shows Balachandaran dead, killed by five bullets shot at close range.

Rape and other forms of sexual violence: The Sri Lankan Government has denied credible allegations of rape and sexual violence committed by SFs members. Second-hand witness accounts obtained by ICEP are consistent with cases reported by Human Rights Watch and the UN Expert Panel. These indicate that SFs members committed rape and sexual violence during Sri Lankan Army's screening process, in IDP camps, during interrogations and at Government hospitals.

Torture and other forms of cruel treatment: ICEP's evidentiary material points to commission of war crimes during interrogations at internally displaced person (IDP) camps, screening sites and in Police custody. ICEP analyzed in detail the civilian witness who reports being tortured while in the custody of Sri Lankan Police's Terrorist Investigation Department. There are reasonable grounds that these acts constitute war crime and crime against humanity of torture or cruel treatment.

Enforced disappearance of persons: Tamil civilians were targeted for enforced disappearances by SFs, at screening sites and IDP camps. Practice of enforced disappearance is coupled to other violations such as torture and other forms of cruel treatment, murder and extra-judicial executions. ICEP has considered the case of Father Francis Joseph who, according to multiple witnesses, surrendered to the SFs and has subsequently disappeared. There are reasonable grounds that the disappearances are a violation of international human rights law and IHL.

Post-conflict violations: ICEP has received reports of post-conflict violations relating to perpetration by SFs of rape and sexual violence, torture and cruel treatment and in relation to those who have disappeared.

A witness who was detained by the Sri Lankan Police's Criminal Investigations Department reported being subjected to torture, sexual violence and repeated rape and while in detention she heard other men and women crying and screaming.

ICEP obtained witness testimony that SF members destroyed forensic evidence in post-conflict period. Human remains from mass burial sites in the conflict zone were exhumed and covertly destroyed. These warrant the urgent need for an internationally mandated investigation.

Conclusion

Sri Lankan government continues to deny the violations outright without adequate investigation of crimes under international law committed by its forces during Sri Lanka's armed conflict and after war. Sri Lanka has still not taken genuine, substantial measures to meet important human rights obligations. Sri Lanka is not willing to hold accountable all those responsible for human rights violations. Torture in police custody persists with impunity. It has done little to end impunity; serious human rights violations remain ubiquitous. The government's increasing intolerance of dissent and continued failure to ensure justice make it clear that there is insufficient action to end impunity and promote human rights.

The Sri Lankan Government has not complied with the UN Human Rights Council's resolutions on reconciliation and accountability. There is strong concern about the independence of Sri Lanka's judiciary and the inadequacy of other checks on executive and military power. Accordingly, there remains serious doubt that the Sri Lankan Government will establish a credible investigation into allegations of war crimes, crimes against humanity and breaches of international human rights law and IHL.

Pasumai Thaayagam Foundation endorses these factual statements and urges the HRC to establish an independent, international commission of inquiry to investigate Sri Lanka's past and present war crimes, crimes against humanity and genocide against Tamils.



General Assembly

Distr.: General
27 February 2014

English only

Human Rights Council

Twenty-fifth session

Agenda item 3

**Promotion and protection of all human rights, civil,
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including the right to development**

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[17 February 2014]

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GE.14-11468



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Promoting Cultural Rights through heritage laws

I. Introduction

The resolution establishing the mandate provides that the Special Rapporteur will examine “means to sensitize institutions and society on diverse cultural heritage.”¹ One way to achieve this goal is to ensure countries with diverse groups have robust cultural heritage laws protecting against the illicit trade and acquisition of cultural patrimony. Cultural heritage laws govern claims asserted by past owners and creators of cultural objects against the current possessor.² As argued below States need a strong legal framework to uphold the diversity of a nation’s culture so certain groups’ culture does not fall prey to illicit acquisitions.

II. International Human Rights Standards

The right to enjoy one’s culture and celebrate its diversity is an international human right that covers participation and enjoyment of culture.³ Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) mirrors the cultural rights enshrined in the Universal Declaration of Human Rights and adds that State parties have the responsibility “for the conservation, the development and the diffusion of science and culture.”

Unfortunately, global recognition of this human right is not enough to curb the illicit trading of cultural heritage and its destruction to communities caused by uprooting cultural patrimony. The trade of cultural patrimony on the black market is the third most profitable entity just behind the selling of guns and drugs.⁴ In response, the United Nations Educational, Scientific and Cultural Organization (UNESCO) promulgated regulations addressing the illicit trade of cultural heritage.⁵ To realize the efforts of UNESCO and international guidelines espoused in the treaties, governments must ensure their own domestic laws advance ways to protect the diversity of culture within and outside their borders.

III. Country Examples

The United States (US) and Australia portray domestic resolutions to recognizing the protection of cultural diversity. Indigenous communities’ cultures are at risk of illicit trading in both countries. Alternatively, Kenya depicts a scenario of how to protect cultural heritage without a national law.

United States

The US has two laws that primarily govern protecting American Indian cultural heritage: the Native American Grave Protection and Repatriation Act (NAGPRA) and the National Museum of the American Indian Act (NMAI). Under NAGPRA, anyone who “knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains” can be prosecuted.⁶ This liability also extends to cultural items.⁷

¹ “Promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity,” A/HRC/RES/23/10 (June 20, 2013).

² Dr. Derek Fincham, *Justice and the Cultural Heritage Movement: Using Environmental Justice to Appraise Art and Antiquities Disputes*, 20 Va. J. Soc. Pol’y & L. 43, 44 (2012).

³ Universal Declaration of Human Rights Art. 27(1).

⁴ Aaron Kyle Briggs, *Consequences of the Met-Italy Accord for the International Restitution of Cultural Property*, 7 Chi. J. Intl. L. 623, 625 (2007).

⁵ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO Convention), 823 U.N.T.S. 231, Art. 1.

⁶ 18 U.S.C.A. § 1170(a).

⁷ *Id.* at § 1170(b).

The NMAI only governs the collections of Native American artifacts and cultural heritage owned and managed by the federal government and its institutions. This act also created a repatriation department within the Museum of the American Indian to establish relationships with federally recognized tribes to pursue returning cultural heritage.⁸ Once human remains, sacred, cultural or funerary objects' cultural affiliation is established with a federally recognized nation, then the Federal institution must immediately act to return the objects or remains.⁹ It is also important to note the NMAI encourages Federal agencies and museums to share information with American Indian tribes.¹⁰

The two statutes are meant to restore the broken links created by colonization practices and also celebrate the diversity of American heritage. By returning lost culture to its original owners and caretakers, communities can assert their right to maintain, exhibit, and control their cultural patrimony according to their customs. This reinforces the Special Rapporteur's mandate to sensitize institutions to diverse cultures by encouraging dialogue to resolve contentious issues of resolving ownership of history and culture. However, it is important to highlight only federally recognized tribes are able to benefit from these laws.¹¹

US laws narrowly construe who may benefit while the international community has a broader conception for indigenous rights.¹² This has led the US to assess whether to endorse the United Nations Declaration of the Right of Indigenous Peoples by consulting Native American Nations.¹³ Recognizing a broader conception would mean the US could be more assertive in reclaiming cultural objects that leave US jurisdiction.

Australia

The most recent policy statement from the Australian government cites the importance of its rich diverse cultural heritage, and particularly identifies Aboriginal and Torres Strait Islander culture as part of Australian identity.¹⁴ To protect and further enhance the rich and diverse cultures of Australia, the government passed two important pieces of legislation, the Moveable Cultural Property Act (MCPA)¹⁵ and the Aboriginal and Torres Strait Islander Cultural Heritage Protection Act (Cultural Heritage Act).¹⁶ Under the MCPA, the government created a National Heritage Control List that divides cultural heritage into two classes (A or B).¹⁷ Class A lists objects that may not be exported. There are specific references to Aboriginal and Torres Strait Islander's heritage such as, "sacred and secret ritual objects, bark and log coffins used as traditional burial objects, human remains, rock art, and dendroglyphs (carved trees)."¹⁸ Class B stipulates these items must have permission to be exported. While Class B contains some Aboriginal culture, the government ensures there must be properly certified permits before any item leaves.

The Cultural Heritage Act grants Aborigines the ability to request the Minister for the Arts to declare certain objects under special protection. The petitioner must meet two criteria: first, establish the significance of the object and second, demonstrate a "threat of injury or desecration."¹⁹ This ability to petition the government to extend its protection of cultural heritage objects strengthens the government's efforts to curb illicit trafficking and promote the culture of Aboriginal and Torres Strait Islanders.

Australia also has a national domestic repatriation program that is part of the Ministry for the Arts. As the main entity for protecting cultural heritage, this agency handles domestic and foreign affairs regarding Indigenous cultural

⁸ <http://nmai.si.edu/explore/collections/repatriation/>.

⁹ 25 U.S.C.A. § 3005.

¹⁰ *Id.* at § 3005(d).

¹¹ Goldberg, Carole E. A United States Perspective. *International Trade in Indigenous Cultural Heritage*. Edward Elgar Publishing Limited, p. 336, 2012.

¹² *Id.* at 340.

¹³ *Id.*

¹⁴ http://arts.gov.au/sites/default/files/indigenous/repatriation/Repatriation%20Policy_10%20Oct%202013.pdf

¹⁵ Act No. 11 of 1986, C2011C00238. http://www.comlaw.gov.au/Details/C2011C00238/Html/Text#_Toc290360542.

¹⁶ Act No. 79 of 1984, C2010C00807. http://www.comlaw.gov.au/Details/C2010C00807/Html/Text#_Toc280161578

¹⁷ *Supra* note 15.

¹⁸ <http://arts.gov.au/movable/export/list>.

¹⁹ *Supra* note 16, at 12, 1(b)(ii).

patrimony. Like the institutions in the US, the Indigenous repatriation program seeks to reconcile past offenses by restoring stolen artifacts, remains and cultural objects to the communities.²⁰

Kenya

Kenya provides an example of how to protect cultural heritage in absence of a legal framework. Sacred burial markers found on Kenya's coast, known as vigango, have been targeted by "some unscrupulous art dealers."²¹ Vigango (plural for Kigango), of the Mijikenda communities, are created from wood to honor departed ancestors. Each one has its own "motif" and the more elaborate the Kigango, the more important the individual.²² Since the Mijikenda believe a Kigango embodies the ancestor's spirit, removing it harms the community.²³

The coastal communities have struggled to reclaim to the Vigango because there is a "lack of direct legal prohibition of their taking. The objects are stolen from villages in Kenya, yet the objects are not old enough to be classified as antiquities."²⁴ Without a legal framework, these communities rely on social justice pleas to restore the broken link between ancestors and their descendants.

Some museums have responded to these social justice initiatives. For example, the Denver Museum of Nature and Science just returned 30 Vigango it received as donations in the 1990s that were believed to have been stolen.²⁵ The museum's curator of anthropology, Chip Colwell-Chanthaphonh, asserted the absence of a legal claim does not negate a museum's ethical duty to return cultural objects.²⁶

IV. Recommendations

Human Rights Advocates urges:

- Governments to assess their legal framework to protect groups at risk of cultural exploitation by encouraging their public and private museums to reach out to indigenous communities to better understand the impact of restoring stolen culture.
- The Human Rights Council to request the Special Rapporteur to investigate how to protect the portrayal of history by assessing ways museums uphold ethical obligations to protect diverse cultures when legal remedies are absent.

²⁰ <http://arts.gov.au/indigenous/repatriation>.

²¹ Dr. Derek Fincham, *Justice and the Cultural Heritage Movement: Using Environmental Justice to Appraise Art and Antiquities Disputes*, 20 Va. J. Soc. Pol'y & L. 43, 93 (2012).

²² Fincham quoting George O. Abungu, "Universal Museums": New Contestations, New Controversies, in *Utimut: Past Heritage--Future Partnerships, Discussions on Repatriation in the 21st Century* 32, 38 (Mille Gabriel & Jens Dahl eds.), 2008.

²³ *Supra* note 21, at p. 93.

²⁴ *Id.*

²⁵ <http://www.nytimes.com/2014/01/04/arts/design/denver-museum-to-return-totems-to-kenyan-museum.html>

²⁶ *Id.*



General Assembly

Distr.: General
27 February 2014

English only

Human Rights Council

Twenty-fifth session

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GE.14-11470



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The Right to Housing: discrimination of low-income communities during mega-events

Human Rights Advocates ("HRA") applauds the Human Rights Council (HRC) for Resolution 13/10¹ acknowledging the work of the Special Rapporteur on adequate housing calling on host states to promote the right to adequate housing during mega-events. Despite this resolution, there are continued concerns regarding violations of the right to housing during mega-events. On 14 June 2013, the United Nations Special Rapporteur on adequate housing, Raquel Rolnik, stated that "mega sporting events can be an opportunity to enhance access to adequate housing. However, past experience has shown that these events often result in forced evictions, displacement, sweeping operations against the homeless and a general augmentation of the cost of adequate housing."² In planning and preparing for these events, host states should ensure that low-income individuals receive protection from forced evictions, criminalization for homeless status, rapid increases in housing prices, and access to low-income housing after the event. The Human Rights Council ("HRC") should encourage states hosting mega-events to uphold their obligations to promote and protect the right to adequate housing.

State's Duty to Protect the Right to Adequate Housing

States hosting mega-events have a duty to ensure that both public and private entities do not discriminate against poor communities or violate their right to housing. Under Article 11 of the International Covenant on Economic, Social and Cultural Rights, state parties have a duty to "take appropriate steps to ensure the realization" of the right to an adequate standard of living, including the right to housing. Moreover, the Guiding Principles on Business and Human Rights, place a burden on states to "protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises."³ During mega-events, states should take affirmative steps to monitor, prevent, and punish violations of the right to housing by private enterprises.

Mega-Events: Past Violations of the Right to Adequate Housing

Forced Evictions

Forced evictions are a prima facie violation of the right to adequate housing and frequently occur during preparations for mega-events.⁴ Forced evictions are the "removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."⁵ During the 2008 Beijing Olympics approximately 1.5 million people were evicted in the preparations for the event.⁶ Many of the evictions were of low-income individuals and were performed without notice or compensation.⁷

¹ A/HRC/RES/13/10 (25 March 2010).

² Brazil: championing football... but what about housing rights?, United Nations Human Rights Office of the High Commissioner, South America Regional Office, June 14, 2013, available at <http://acnudh.org/en/2013/06/brazil-championing-football-but-what-about-housing-rights/>. (hereinafter "Championing Football, ACNUDH").

³ Guiding Principles on Business and Human Rights, United Nations Human Rights Office of the High Commissioner, (2011), available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁴ Fair Play for Housing Rights, The Centre on Housing Rights and Evictions ("COHRE"), June 2007, p. 73-75, available at http://nogames.files.wordpress.com/2009/06/fair_play_for_housing_rights-cohr.pdf. (hereinafter "Fair Play and Housing Rights, COHRE").

⁵ UN Committee on Economic, Social and Cultural Rights, General Comment No. 7 on the Right to Adequate Housing and Forced Evictions, (1997)

⁶ One World, Whose Dream? Housing Rights Violations and the Beijing Olympic Games, COHRE, July 2008, p. 6, available at http://www.cohre.org/sites/default/files/mega_events_-_one_world_whose_dream_july_2008.pdf. (hereinafter "One World, COHRE")

⁷ Demolished: Forced Evictions and the Tenant's Rights Movement in China, Human Rights Watch, Vol. 16, No. 4; March 2004, page 6-18

Gentrification and Reduction in Low-Income Housing

Gentrification and reductions in low-income housing are also common occurrences during mega-events and infringe on low-income communities' right to adequate housing. The right to housing requires "basic infrastructure and adequate location with regard to work and basic facilities ... at a reasonable cost."⁸ Thus, state parties should ensure that housing remains affordable for low-income communities during mega events. During the 2000 Sydney Olympics, there was a sharp increase in private housing costs with a subsequent reduction in other forms of low-cost housing (such as boarding houses).⁹ Moreover, there was no increase social or government-subsidized housing to supplement the decrease in low cost housing.¹⁰ Sharp increases in housing prices near mega-event locations frequently force low-income communities out of city centers, further marginalizing these communities by forcing them farther away from transportation, jobs, and schools.¹¹ The potential long-term impact on housing prices, coupled with the reduction in socialized housing during these events, can create permanent displacement of low-income individuals.¹² Host states should establish rent control mechanisms and ensure that affordable housing is not impacted by the mega-event.

Criminalization of the Homeless

Adoption of laws criminalizing homelessness is another form of discrimination frequently occurring in preparation for mega-events. During the 1996 Atlanta Olympics, approximately 9,000 homeless people were issued arrest citations after the city enacted the Quality of Life Ordinance that criminalized sleeping in derelict buildings and begging.¹³

Right to Housing: The Role of the International Olympic Committee

The International Olympic Committee ("IOC"), as an "organ of society," should demand host countries follow their obligations under the right to housing. Although the IOC has failed to hold host states accountable for past human rights violations relating to mega-events, the organization has recently implemented a promising policy with respect to the bidding process. During the 2012 bidding process the IOC required perspective host cities to cooperate with the government and local NGO's in efforts relating to environmental sustainability.¹⁴ The IOC should continue to improve its bidding process by requiring host cities to ensure protection for low-income communities from forced evictions, gentrification, and criminalization of homelessness.

Low-Income Communities Can and Should Benefit From Mega Events

There is usually an influx in foreign capital and massive infrastructural improvements in cities hosting mega-events like the FIFA World Cup and Olympics; however, low-income communities usually do not enjoy these benefits.¹⁵ But, some former host cities have also implemented many positive measures to promote the housing needs of low-income communities. During the 2000 Sydney Olympics, the city enacted a Homelessness Protocol prohibiting arrests of "unfortunates" during the Olympics.¹⁶ In 2011, London had plans to devote 50 percent of new housing to social housing.¹⁷ Future host cities should look to these policies as examples of procedures ensuring the non-discrimination of low-income communities during mega-events.

⁸ UN Committee on Economic, Social and Cultural Rights, General Comment No. 4 on the Right to Adequate Housing and Forced Evictions, (1991).

⁹ Fair Play and Housing Rights, COHRE, 134

¹⁰ *Id.*

¹¹ *Id.* at 185.

¹² *Id.* at 197-199

¹³ *Id.* at 119

¹⁴ *Id.* at 50

¹⁵ *Id.* at 73-75

¹⁶ *Id.* at 127

¹⁷ Report of the Special Rapporteur on adequate housing as a of the right to an adequate standard of living, and on the right to non- component discrimination in this context, A/HRC/13/20 (2009) p. 17.

Upcoming Mega Events and the Right to Adequate Housing

Despite some of these positive developments, there have been some concerns regarding housing rights for upcoming mega-events. It was recently reported that during the Sochi Olympic games, more than 1,000 people were relocated under legislation known as Law 301, which allowed the seizure and demolition of privately owned plots of land and buildings in preparation for the Olympics.¹⁸ Many of the evicted claimed that the compensation was inadequate.

In addition to the recent issues with the Sochi games, there have been more concerns with the upcoming 2014 FIFA World Cup and 2016 Olympic games hosted by Brazil. Amnesty International has reported that many residents in Rio de Janeiro's low-income areas have already lost their homes to build the 2016 Olympic infrastructure.¹⁹ The Special Rapporteur on adequate housing, Raquel Rolnik, has expressed concern over allegations of forced evictions and the adequacy of compensation for those evicted.²⁰ On 14 June, 2013, Ms. Rolnik called on the Brazil to adopt "national regulations to guide the activities of local governments and third parties involved in these projects."²¹ Ms. Rolnik also stressed the importance of creating a stable housing market and ensuring more affordable housing.²²

Without affirmative actions by host states low income communities will continue to face discrimination during mega-events. In addition to the upcoming mega-events in Brazil, Russia will be hosting the 2018 FIFA World Cup and Pyeongchang, South Korea will be hosting 2018 Winter Olympics. The upcoming mega-events present an excellent opportunity to implement the positive practices of past mega-events.

HRA urges:

- a. State parties to uphold their obligations under the HRC Resolution 13/10 by:
 1. Developing mechanisms to monitor, prevent, and punish both public and private entities from performing forced evictions and other violations of the right to housing relating to mega-events.
 2. Providing plans for the protection of low-income individuals and the homeless during the bidding process.
 3. Enacting rent control policies, protect existing affordable housing, and provide follow-up reports regarding development of low-income housing after the events.
 4. Adopting ordinances and procedures to protect the homeless from displacement and discrimination.
- b. The HRC to continue to monitor this issue.

¹⁸ Sergei L. Loiko, Sochi Olympic Winter Games at root of residents' housing woes, Los Angeles Times, February 6, 2014, available at <http://www.latimes.com/world/la-fg-sochi-dark-side-20140207,0,1802689.story#ixzz2swhaR6O1>.

¹⁹ Brazil: Forced evictions must not mar Rio Olympics, Amnesty International, November 14, 2011, available at <https://www.amnesty.org/en/news/brazil-forced-evictions-must-not-mar-río-olympics-2011-11-14>.

²⁰ Championing Football, ACNUDH, supra n. 2

²¹ Id.

²² Id.



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GE.14-11472



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The death penalty constitutes torture: The need for moratoriums on sentencing

The world is evolving its view on use of the death penalty, and countries are changing and abolishing their use of capital punishment. As of May 2013, there are 140 countries that have abolished executions by law or practice compared to 1977 when only 16 countries that had abolished the death penalty. The international community is quickly deciding use of the death penalty constitutes torture and is moving towards abolition.¹

Use of the death penalty constitutes torture, cruel, inhumane and degrading treatment in at least two ways: the death row phenomenon and the methods of execution used. The torture caused by both of these are clearly prohibited by Article 7 of the ICCPR.² Prohibitions of torture are found in numerous international treaties, such as the European Convention on Human Rights,³ the African Charter on Human and Peoples Rights,⁴ and the Convention Against Torture. Prohibition of torture has truly become a preemptory norm. The U.N. Special Rapporteur on Torture has acknowledged an evolving international norm that use of the death penalty is a per se violation of the prohibition against torture and other cruel, inhuman or degrading treatment, and that the death row phenomenon itself violates Article 7 of the ICCPR.⁵

The death row phenomenon is acknowledged in international jurisprudence, and produces severe mental trauma and physical deterioration in prisoners under sentence of death.⁶ The circumstances to create death row phenomenon include the lengthy anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact, and poor physical conditions. In *Soering v. United Kingdom*, the European Court of Human Rights ruled that extraditing the applicant back to the U.S., where he would face the death penalty, amounted to inhuman and degrading punishment because of the death row phenomenon he would suffer.⁷

The Inter-American Commission on Human Rights has found that conditions on death row violate the American Convention on Human Rights.⁸ In *Aitkin v. Jamaica* the commission found that the conditions petitioner suffered during 4 years on death row failed to respect his physical, mental, and moral integrity and constituted inhumane treatment in violation of the Convention.⁹ In *Hilaire v. Trinidad and Tobago*, the Inter-American Court of Human Rights held that the death row phenomenon was a cruel, inhuman, and degrading treatment, and was characterized by a prolonged period of detention while awaiting execution.¹⁰ The Special Rapporteur notes that solitary confinement is the

¹ Amnesty International, *Death Penalty Facts and Trends*, found at: <http://www.amnestyusa.org/our-work/issues/death-penalty/us-death-penalty-facts/death-penalty-trends>

² International Covenant on Civil and Political Rights, Article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

³ European Convention on Human Rights, Article 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

⁴ African Charter on Human and People's Rights, Article 5: "...torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

⁵ UN General Assembly, *Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, August 9, 2012, *A/67/279, found at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/458/12/PDF/N1245812.pdf?OpenElement>. (hereinafter *Interim Report*).

⁶ Patrick Hudson, "Does the death row phenomenon violate a prisoner's rights under international law?", *European Journal of International Law*, vol. 11, No. 4 (2000), pp. 834-837.

⁷ *Soering v. The United Kingdom*, 1/1989/161/217, Council of Europe: European Court of Human Rights, 7 July 1989, found at: <http://www.unhcr.org/refworld/docid/3ae6b6fec.html>.

⁸ *Paul Lallion v. Grenada*, Case 11.765, Report No. 55/02, Inter-Am. C. H.R., Doc. 5 rev. 1, October 21, 2002, found at: <http://www1.umn.edu/humanrts/cases/55-02.html>.

⁹ *Aitken v. Jamaica*, Case 12.275, Report No. 58/02, Inter-Am. C.H.R., Doc. 5. Rev. 1 at 763 October 21, 2002, found at: <http://www1.umn.edu/humanrts/cases/58-02.html>.

¹⁰ Judgement of 21 June 2002 in *Hilaire, Constantine, Benjamin et al. v. Trinidad and Tobago*, Series C, No. 94, para. 167.

prevailing norm for death row inmates, and that "[s]olitary confinement used on death row is by definition prolonged and indefinite and thus constitutes cruel, inhuman or degrading treatment or even torture."¹¹

Egregious examples of prolonged death row sentences include N.I. Sequoyah, who is an inmate at San Quentin State Prison in California, USA. Sentenced to death in March of 1992, he has now spent over 20 years on death row. It took California 5 years to appoint counsel, and another 10 years to reconstruct lost transcripts of his trial. These facts and delays were acknowledged by the IACHR in an admissibility decision on March 2012.¹² Over 20 years on death row has caused N.I. Sequoyah to suffer both physically and mentally. In Japan, Okunishi Masaru, has spent more than 40 years on death row and recently had his seventh request for a retrial denied. Japan has the longest serving death row inmate in the world, Hakamada Iwao, who was convicted in 1968. Iwao has suffered severe mental illness from being in solitary confinement on death row for over 40 years.¹³

In addition to the death row phenomenon, the executions themselves constitute torture. There is no method of execution that comports with international standards of humanity and dignity. The European Court of Human Rights found in *Al-Saadoon & Mufdhi v. United Kingdom* that any form of execution amounts to torture because all forms involve physical pain, in addition to intense psychological suffering awaiting death.¹⁴ The Human Rights Committee found that "public executions are ... incompatible with human dignity."¹⁵ Conversely, secret executions violate the rights of the convict and his/her family to prepare for death.

Many countries believe lethal injection is the most humane form of execution. Recent research suggests that in fact the person is simply paralyzed but still able to feel excruciating pain while slowly dying. These new findings have resulted in many U.S. states to suspend executions.¹⁶ However, the Supreme Court of the United States has held that use of lethal injection is constitutional and does not amount to cruel and unusual punishment, despite a case where a man took 34 minutes to die after two doses of the poison.¹⁷ HRA commends the European Union and private companies who have refused to supply the U.S. with the drugs used in lethal injection. Unfortunately, U.S. states have begun experimenting on inmates with untested drugs, and currently 4 different states are trying 4 different drugs for 2014. On January 16, 2014, one such experiment resulted in Dennis McGuire struggling physically for breath, gasping loudly, and choking during an execution which lasted 15 minutes.¹⁸

The United Nations High Commissioner for Human Rights has suggested that hanging, as a matter of law, is contrary to the ICCPR.¹⁹ Despite proof that hanging is painful and violates human dignity, eight men have been executed by hanging in Japan within the past year.²⁰ This is a huge step backward for Japan who just a few years ago seemed to be moving toward abolition. All of these executions were done in secret, with the inmates not knowing until the morning

¹¹ Supra note 5.

¹² N.I. Sequoyah, Report No. 42/10, Inter-Am. Commission of H.R., found at: www.cidh.org/annualrep/2010eng/USAD120-07EN.doc.

¹³ Amnesty International, *Japan: Death row inmate's retrial rejection is "travesty of justice"*, found at: <http://www.amnestyusa.org/news/news-item/japan-death-row-inmate-s-retrial-rejection-is-travesty-of-justice>.

¹⁴ Judgment 2 March 2010 in *Al-Saadoon & Mufdhi v. United Kingdom*, application No. 61498/08, para. 99.

¹⁵ International Bar Association, *The Death Penalty under International Law: A background paper on the IBAHRI Resolution on the Abolition of the Death Penalty*, May 2008.

¹⁶ Suzanne Goldenberg, *America Turns its back on Death Penalty after botched lethal injection of killer*, January 9, 2007, found at: <http://www.guardian.co.uk/world/2007/jan/10/usa.suzannegoldenberg>.

¹⁷ *Baze et al. v. Rees, Commissioner, Kentucky Department of Corrections et al.* of 16 April 2008, case No. 07-5439.

¹⁸ Death Penalty Information Center, *Problems Arise as Ohio Tries New Execution Procedure*, found at: <http://deathpenaltyinfo.org/problems-arise-ohio-tries-new-execution-procedure>.

¹⁹ Supra note 5.

²⁰ The Guardian, *Japan condemned for "secret" executions*, found at: <http://www.theguardian.com/world/2013/dec/12/japan-condemned-secret-executions>.

of that they would be executed and their families notified only after the fact. It was reported that over 60 people have been executed by hanging within a month during 2013 in Iran.²¹

Human Rights Advocates (HRA) commends the General Assembly's call for moratoriums on executions in previous year's resolutions,²² but the time has come for moratoriums on death penalty sentences. Allowing inmates to sit even longer with death sentences, not knowing when they will be executed, only exacerbates the torture caused by the death row phenomenon. Also, states that were abolitionist by practice may revert back to executing people already given death sentences, as India²³ and Pakistan²⁴ have both recently done.

HRA urges the Human Rights Council to urge States to:

- Enact moratoriums on death penalty sentences.
- Begin a dialogue about the death penalty within their individual countries.
- Adhere to international human rights standards of human dignity by instituting alternative methods of punishment.
- Prevent torture caused by the death row phenomenon.

²¹ Human Rights Activists News Agency, *A Prisoner is Hanged in Gachsaran*, found at: <http://hra-news.org/en/prisoner-hanged-gachsaran>.

²² U.N. General Assembly Resolution, *Moratorium on the use of the death penalty*, A/RES/62/149 (18 December 2007); A/RES/63²²/168 (18 December 2008); GA/11041 (21 December 2010); GA/11331 (20 December 2012).

²³ Human Rights Watch, *India: Secret Hanging a major step back*, February 9, 2013, found at: <http://www.hrw.org/news/2013/02/09/india-secret-hanging-major-step-back>.

²⁴ Human Rights Watch, *Pakistan: Execution ends Moratorium on Death Penalty*, November 21, 2012, found at: <http://www.hrw.org/news/2012/11/20/pakistan-execution-ends-moratorium-death-penalty>.



General Assembly

Distr.: General
27 February 2014

English only

Human Rights Council

Twenty-fifth session

Agenda item 3

Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Written statement^{*} submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in
accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

^{*} This written statement is issued, unedited, in the language(s) received from the submitting
non-governmental organization(s).

GE.14-11474



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Promoting the Right to Food through food sovereignty

The concept of food sovereignty has been developing rapidly since it was first proposed a decade ago. It has become a reference point for discourse on food issues worldwide. Food sovereignty can be defined as “the right of peoples to define their own food and agriculture; to protect and regulate domestic agricultural production and trade in order to achieve sustainable development objectives; to determine the extent to which they want to be self-reliant; to restrict the dumping of products in their markets....”¹

This statement will address the food insecurity aspect of food sovereignty. Global food insecurity persists because food production and its distribution do not meet the needs of the world’s population.² The right to food is an inclusive right. It is not a right to a minimum ration of calories, proteins and other nutrients. It is a right to all nutritional elements that a person needs to live a healthy life and a right to accessible food.³

The UN Special Rapporteur on the right to food (SR), described food security as: “The right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people and mental, individual and collective, fulfilling and dignified life free of fear.”⁴

Food insecurity impacts, and is impacted by, a range of other factors such as health and employment.⁵ Three ways to address food insecurity are to increase: the area under food production; productivity per unit area; and the connectivity within food systems so that less food is wasted from the point of production to consumption. While genetically-modified (“GM”) crops may in some cases increase production, it is apparent that they are not the most efficient or proper method.

The root cause of hunger is not a lack of food, but a lack of access to food. In Mexican households food insecurity is a problem of availability, access and consumption of food.⁶ The poor lack money to buy food and lack land on which to grow it. It is essential to: follow sustainable traditional farming practices that keeps food production in the hands of small-scale farmers, thereby reducing corporate control. When food systems are under corporate control, genetically modified organisms (GMO’s) are often created by altering the DNA of an organism (in this case a food producing plant) to change the plant’s characteristics. Through this process of genetic engineering (GE) a plant can be made to produce a higher yield, be more resistant to pesticides, require less water, be fast growing, etc.⁷ However, there are a number of problems with this approach that will be discussed: unsustainable long-term agriculture and negative health effects. The last section will address a better method for achieving sustainable agriculture.

I. GM Technology Fails to Address Food Security

Technological advancement in agriculture is not catering to the need of the food insecure. Rather, it supports corporate control and impedes common persons’ access to adequate food. In one example confirming the poor yield performance of GM crops, a U.S. Dept. of Agriculture report noted, “GE crops available for commercial use do not increase the yield

¹Michael Windfuhr and Jennie Johnson, *Towards democracy in localized food systems*, Introduction (2005) citing People’s Food Sovereignty Network (2002), http://www.ukabc.org/foodsovereignty_itdg_fian_print.pdf

²*The Challenge of Food Security: International Policy and Regulatory Frameworks*, Ed. by Rosemary Rayfuse and Nicole Weisfeldy, p. 19 (Edward Elgar 2012)

³*The Right to Adequate Food*, Human Rights Fact Sheet no. 34 (2010) at 2, <http://www.srfood.org/images/stories/pdf/otherdocuments/factsheet34en1.pdf>

⁴*The Right to Adequate Food*, FAO Fact sheet no. 43, at 2, <http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>

⁵*The Challenge of Food Security*, *supra* note 2 at 44.

⁶*Food Security and Nutrition in Mexico*, at 3, USDA (July 2010), GAIN Report No.: MX0043, <http://gain.fas.usda.gov>

⁷Yvette Taylor, *Food security and the GMO Myth* (2011), available at http://www.earthorganization.org/articles/Library/Food_Security_and_GMO_Foods/default.aspx

potential of a variety. In fact, yield may even decrease. Perhaps the biggest issue raised by these results is how to explain the rapid adoption of GE crops when farm financial impacts appear to be mixed or even negative.”⁸

Many authoritative sources, reporting on the future of agriculture, have found that GM crops have little to offer global agriculture and the challenges of poverty, hunger and climate change, because better alternatives are available. These alternatives go by many names, including integrated pest management (IPM), organic, sustainable, low-input, non-chemical pest management (NPM) and agro ecological farming, but extend beyond the boundaries of any particular category.

II. Negative Health Effects

Usually, analysis of GMO safety fails to consider important issues like:

- GMO plants, seeds and byproducts contain not only residues of commercial chemical pesticides, but also insecticidal proteins produced by the plant.
- Each commercial pesticide contains chemicals that undergo changes within pesticide containers, when mixed with other pesticides, and when released in the environment.¹⁰

The lack of scientific consensus on the safety of GM foods and crops is underlined by the recent research calls by the European Union and the French government to investigate the long-term health impacts of GM food consumption in light of uncertainties raised by animal-feeding studies.¹¹ Sovereignty concerning GMO's demands further studies and debates centered on GMO'S in agricultural production.¹²

Numerous studies indicate that GMOs have harmful health effects, including:

- Rats fed with GM tomatoes developed stomach lesions.¹³
- GM potatoes fed to rats caused excessive growth of the lining of the gut similar to a pre-cancerous condition.¹⁴
- Rats fed GMO maize over three generations suffered damage to liver and kidneys and other organs.¹⁵

III. Sustainable Agriculture as Improved Technique to Achieve Food Sovereignty

Sustainable agriculture can be defined as: “an integrated farming system ... which is based on locally adapted agro-diverse cropping patterns and use of local resources (natural resources and processes), based on local knowledge, skills and innovations.”¹⁶

Sustainable agriculture includes an integrated system of plant and animal production practices having a site-specific application that will, over the long term satisfy human food and fiber needs while protecting the natural resource upon

⁸ *GM Crops – Just the Science*, Non-GMO Project (2009), at 4 (citing USDA Report, May 2002, <http://www.nongmoproject.org/wp-content/uploads/2009/07/GM-Crops-just-the-science.pdf>)

⁹ *Id.* at 8.

¹⁰ European Network of Scientists for Social and Environmental Responsibility (ENSSER), Press Release (Dec. 2013), <http://www.ensser.org/media/0713/>

¹¹ *No Scientific Consensus on GMO Safety*, ENSSER (2013, <http://www.ensser.org/increasing-public-information/no-scientific-consensus-on-gmo-safety/>)

¹² Mae Humiston, *Feeding the World, Ruling the World*, at 40-41 (Tufts University 2013).

¹³ Michael Antoniou, Claire Robinion and John Faga, *GMO'S Myths and Truths*, (2012), http://earthopensource.org/files/pdfs/GMO_Myths_and_Truths/GMO_Myths_and_Truths_1.3b.pdf.

¹⁴ *GM Foods are Not Safe*, Institute for Responsible Technology (citing Pusztai A. and Bardocz S. and Ewen S.W.), <http://responsibletechnology.org/docs/gmos-are-not-safe.pdf>.

¹⁵ Jeffrey M. Smith, *Most Off-spring Died When Mother Rats Ate GM Soy*, (2005) <http://www.rense.com/general68/rats.htm>.

¹⁶ *Sustaining Agriculture in the Era of Climate Change in India*, Food and Water Security Coalition of India (2008), http://www.fwsci.com/climate-change/Position_paper_-_CSA.doc

which agriculture is based. Sustainable agriculture makes the most efficient use of non-renewable resources and on-farm resources and integrates, where appropriate, natural biological cycles and controls, while sustaining the economic viability of farm operations and enhancing the quality of life for farmers.

The SR has called for supporting local food production in developing countries.¹⁷ The main goals of developing countries should be to protect the pre-harvest losses including drought, flooding, weeds, pests, and rodents. However, the majority of food loss is due to lack of storage space, processing, and transportation; also 25% of food grain is lost to insects and mites.¹⁸ The agriculture system that is informed by thousands of years of traditional farmers' wisdom blended with cutting-edge scientific knowledge is called "agroecology" and it is being practiced by grassroots communities worldwide.

The traditional knowledge of family-based farmers encompasses basic ecological principles for planning and managing sustainable agricultural systems. Agroecology links ecology, agronomy, culture, economics and society to create healthy environments, food production and communities supporting food sovereignty.¹⁹ The progress made towards the implementation of the right to food must therefore be sustained and further strengthened.

The role of national governments is to create the legislative framework that will ensure that progress is made towards the eradication of hunger and malnutrition, by setting clear targets, by monitoring progress, by ensuring effective coordination of efforts, by institutionalizing the dialogue between government and civil society to identify solutions, and by ensuring accountability in the implementation of laws, policies and programs.²⁰

IV. Human Rights Advocates urges:

1. The Human Rights Council to recognize the importance of food sovereignty for promoting the right to food.
2. States to create legislative framework that will ensure eradication of hunger and malnutrition that includes:
 - a. Special government supplies for small landholders and protection of their traditional agriculture knowledge;
 - b. Appropriate storage to prevent food waste;
 - c. Segregation of GM crops and seeds from conventional ones; and
 - d. Assurances of food that will not have negative health consequences.

¹⁷ *WTO rules must address food security needs of developing countries*,

<http://www.un.org/apps/news/story.asp?NewsID=46637&Cr=Food+Security&Cr1=#.Uv7rMs5njU0>.

¹⁸ *The Challenge of Food Security*, supra note 2, at 38-39.

¹⁹ *A Holistic Science*, International Development Exchange, <https://www.idex.org/solutions/agroecology>.

²⁰ *A Rights Revolution, Implementing the Right to Food in Latin America and The Caribbean*,

<http://www.srfood.org/images/stories/pdf/otherdocuments/note06-septembre2012-en-v2.pdf>